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This rule, when applied to questions of the ownership of vessels, means that the Court is not bound to determine the neutral or enemy character of a vessel according to the flag she is flying, or may be entitled to fly, at the time of capture. The owners are bound by the flag which they have chosen to adopt, but captors as against them are not so bound. It has been said that 'it is no inconsiderable part of the ordinary occupation of a Prize Court to pull off the mask and exhibit the vessel in her true character'."

SALES — CONDITIONAL SALES — RIGHT OF VENDOR TO RESERVE TITLE AND RIGHT TO SUE FOR PRICE.—Plaintiff was a purchaser at an execution sale of goods levied on as those of a purchaser under a conditional sale providing for the right to retake and for retention of title by the vendor. The vendor had sued out judgment against the vendee and later assigned all his rights to the defendant. *Held,* plaintiff did not acquire title as against the defendants, assignees of the vendor. *Wiedenbeck-Doblin Co.* v. *Anderson* (Wis., 1919), 169 N. W. 615.

The conflict of authority on this subject is brought out by a comparison of the principal case with the case of *Young* v. *Phillips,* 169 N. W. 822, decided by the Supreme Court of Michigan, December 27, 1918, wherein the court on the authority of *Atkinson* v. *Japink,* 186 Mich. 335, without a statement of facts, held a provision for retention of title in the vendor with a right to sue for the price would be construed as intending merely to give the vendor a lien for security and result in an absolute sale, the right to retain title and sue for the price being inconsistent. In effect, the decisions are in conflict. In Wisconsin, a seller may retain title to the goods and at the same time sue for the price. In Michigan, if the seller attempts to secure himself by retaining title and at the same time reserve the right to sue for the price, the courts will declare the remedies inconsistent, the sale absolute and the seller relegated to a lien for his security. In neither case does the decision appear to rest on a statute. Commonly a buyer's liability for the purchase price is contingent on the passage of title. But the parties by contract may base the liability on possession of the goods and right to acquire title in which case the seller may have his action for the price with the buyer's right to possession as the *quid pro quo. White* v. *Solomon,* 164 Mass. 516; *Burnly* v. *Tufts,* 66 Miss. 48; *Tufts* v. *Griffin,* 107 N. C. 47. In *J. M. Arthur and Company* v. *Blackman,* 63 Fed. 536 and *Randall* v. *Stone,* 77 Ga. 501, the court found the destruction of the goods before payment and the consequent inability to pass title relieved the vendee of liability on the ground of failure of consideration. Conceivably, parties might contract for the sale of goods, the buyer's liability to be contingent on his acquisition of possession and right to acquire title. If from a reasonable construction of the contract, this intention appears, it hardly lies with the court to gainsay it. If by "inconsistent" the Michigan court means merely that it is unreasonable, it lays itself open to the objection of re-writing the contract. If, on the other hand, its meaning is to hold that retention of title and a right to sue for the price cannot legally stand together it is tantamount to holding that the only consideration the law recognizes for a buyer's agreement to pay is

the seller's agreement to pass title. In *Atkinson* v. *Japink, supra,* while the seller and his assignee were awarded a right analogous to a statutory lien against the chattel, it was held that the contract reserving to the seller both the title and the right to sue for the price showed that the parties intended title should be reserved to the plaintiff only as a security for the price, *i. e.,* in the nature of a lien and that therefore there was not a conditional but an absolute sale. The Wisconsin court, on the contrary, holds the existence of these two remedies to be not inconsistent but cumulative and hence imposed no alternative to elect between them. In cases where passage of title is not the consideration for the price, this may be true. However, where it clearly appears that payment of the price is in consideration of the passage of title, it is submitted that the right to sue for the price to be paid for the title and the retention of the title are inconsistent.

SALES — CONSIDERATION FOR WARRANTY. — Plaintiff agreed to purchase a specified horse from defendant, and paid part of the stipulated purchase price. Thereafter, but before delivery of the horse and payment of the balance of the price, defendant warranted the horse. *Held,* the warranty was enforcible. *Bowen* v. *Zaccanti* (Mo., 1919), 208 S. W. 277.

The court makes the sole issue whether title had passed at the time of the agreement, holding that it had not. On the usual presumption, however, title had passed, as nothing except delivery and payment remained to be done. *Bill* v. *Fuller,* 146 Cal. 50; *Kessler* v. *Veio,* 142 Mich. 471. But what has passing of title to do with the binding quality of a warranty? The courts have held that a warranty made after the passing of title is enforcible only when there is a new consideration. *Baldwin* v. *Daniel,* 69 Ga. 782; *Congar* v. *Chamberlain,* 14 Wis. 258. The court in the principal case seems to have concluded from this proposition that a warranty made before title had passed is, *ipso facto,* binding regardless of consideration. The court bases its decision on *Douglas* v. *Moses,* 89 Ia. 40, and *McGaughey* v. *Richardson,* 148 Mass. 608. While *Douglas* v. *Moses* supports the decision, it is itself based upon the other case cited, which in no way is authority for its holding. In *McGaughey* v. *Richardson* the vendor of horses at auction had advertised that warranty would be given purchasers at the sale, and the vendee after having a horse knocked down to him had the vendor insert a warranty in the bill of sale. The warranty was one of the terms of the contract, and unless it had been made, the vendee might well have claimed a recission of the bargain.

STATUTORY CONSTRUCTION — UNINTENTIONAL OMISSION OF WORD "NOT" FROM STATUTE.—Statute prohibited the use of automobile lights unless designed to throw a ray "which shall rise above 42 inches" at a distance of 75 feet. Defendant's lights threw a ray which did not rise above 42 inches at this distance. Expert testimony clearly showed to the court that ligths in conformity with the requirements of the statute were "blinding," while those throwing a ray *not* above 42 inches at the stated distance were not; and that the latter alone was what the legislature could have intended. *Held,* that it is not within the power of the court to read the word "not" into the